

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**NEW MEXICO HEALTH CONNECTIONS,
a New Mexico Non-Profit Corporation,**

Plaintiff,

v.

No. 1:16-cv-878-JB/JHR

**UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES, et al.,**

Defendants.

MOTION OF AMERICA'S HEALTH INSURANCE PLANS AND BLUE CROSS BLUE SHIELD ASSOCIATION FOR LEAVE TO FILE STATEMENT ON NEW DEVELOPMENTS IN SUPPORT OF RULE 59(e) MOTION AS *AMICI CURIAE*

Pursuant to Federal Rule of Civil Procedure 7(b) and D.N.M.LR-Civ. 7, America's Health Insurance Plans (AHIP) and Blue Cross Blue Shield Association (BCBSA) respectfully seek leave as *amici curiae* to file the attached 4-page statement. The statement brings to the Court's attention significant recent developments regarding the operation of the risk adjustment program with potential ramifications for this Court's resolution of Defendants' Motion to Alter or Amend Judgment Pursuant to Federal Rule of Civil Procedure 59(e) (Dkt. No. 57). Counsel for the Plaintiff represents that it opposes the motion; counsel for the Defendants represents that they do not oppose the motion.

AHIP as the national trade association representing health plans, and BCBSA as the national association of Blue Cross Blue Shield health plans, respectfully submit that their perspective will provide the Court with a deeper and more comprehensive understanding of the issues involved in—and the urgency of an immediate resolution of—the pending Rule 59(e) motion. AHIP and BCBSA have developed deep experience and expertise regarding the Affordable Care Act individual and small group markets. AHIP and BCBSA represent health

plans that both pay and receive risk adjustment transfers. AHIP and BCBSA seek to provide the Court with their informed perspective on the profound adverse consequences of the Court's judgment—particularly in light of the material new developments described in the attached statement—for consumers as well as for health plans. Those consequences counsel strongly in favor of a grant of Defendants' reconsideration motion (at least as to remedy), so as to allow risk adjustment transfers to occur under the existing methodology.

For the foregoing reasons, the Court should grant this motion.

July 19, 2018

Respectfully submitted,

/s/ Merrill C. Godfrey

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CERTIFICATE OF SERVICE

I certify that on July 19, 2018, the foregoing motion was electronically submitted to the Clerk of Court for the U.S. District Court for the District of New Mexico using the Court's electronic case filing system. Accordingly, notice of this filing will be sent to all counsel of record.

/s/Merrill C. Godfrey